IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6504 OF 1996
With
SPECIAL CIVIL APPLICATION NO. 4522 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

JAYVIRSINH R. JADEJA - Petitioner(s)
Versus
RAJKOT MUNICIPAL CORPORATION - Respondent(s)

==========

Appearance :
Shri B.D. Datta for Petitioner(s).
Shri K.V. Gadhia for Respondent(s).

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/07/2007

COMMON ORAL JUDGMENT

The parties are heard.

2. Each of the petitioners, being aggrieved by the award dated 21st September, 1995 passed by the learned Presiding Officer, Labour Court, Rajkot in Reference (LCR) No.340 of 1987, is before this Court.

3. The submission of the Rajkot Municipal Corporation is that the order of reinstatement with 25% back-wages could not be made in favour of the workman, while the workman says that despite his entitlement to 100% of back-wages, the learned Labour Court erred in awarding 25% back-wages only.

4. The short case is that the workman was employed as a daily wager in the year 1974 and thereafter, he worked upto 1981, though, according to the Corporation, he worked upto August-1979. Thereafter, the workman was removed from the services. Therefore, he made an application for referring the matter, which was accordingly referred and the reference was registered as LCR No.340 of 1987.

The learned Labour Court, after recording the evidence and hearing the parties, held that the workman had worked upto the year 1981, the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("the Act" for short) were not followed and that his removal amounted to retrenchment. It accordingly directed reinstatement, but, taking into

consideration the absolute lethargy on the part of the workman, it refused to grant back-wages for the period prior to the date of the reference, but, however, awarded 25% wages *pende lite*.

5. Shri K.V. Gadhia, learned Counsel for the Corporation, submits that the workman had worked upto the year 1979 and he made an application for reference in the year 1987, therefore, the application was belated. He also submits that present was not the case for grant of the reliefs as prayed by the workman and if this Court does not agree with any of the contentions of the Corporation, then, a lump sum amount as compensation be paid to the workman.

6. Shri Dutta, learned Counsel for the workman, however, submits that present is a case where on the strength of the evidence available on the records, the learned Labour Court held that the workman worked upto the year 1981 and thereafter only, the workman was removed from the services.

7. Undisputedly, the workman in the year 1979 had worked for 240 or more days. If the case of the employer is accepted, then, in view of the workman working for 240 or more days, he was entitled to a notice or wages in lieu of the notice before his removal. In the present case, the employer did not observe the mandatory provisions and

thereby made its order vulnerable. So far as the compensation is concerned, on being asked, Shri Gadhia says that as they are paying the wages to the workman from the year 1995 till date, present is a fit case for award of compensation of Rs.25,000/-. On the other hand, Shri Datta, learned Counsel for the workman, submits that the workman still has at least 11 years to go and under the circumstances, the amount offered as compensation, in fact, is pittance. He also submits that for the period *pende lite,* the workman ought to have been awarded 100% back-wages because at least from the date of the reference, there was nothing wrong on the part of the workman.

However, during the course of the arguments, Shri Datta submitted that he does not press for 100% back-wages for the period *pende lite,* but, would be satisfied with the award of 25% back-wages.

8. Taking into consideration the violation of Section 25-F of the Act, I am unable to hold that the learned Court below was unjustified in directing reinstatement. So far as 25% back-wages are concerned, the award appears to be justified in view of the pendency of the litigation for almost about 7 – 8 years. No interference on that part of the award is also called for because the learned Counsel for the workman does not press his petition, being Special Civil Application No.6504 of 1996.

9. Both the petitions are dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**